

General Accounting Office

§ 28.17

with the PAB or by filing a charge with the PAB's Office of General Counsel.

[61 FR 36810, July 15, 1996]

HEARING PROCEDURES FOR CASES BEFORE THE BOARD—GENERAL

§ 28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in § 28.17 (concerning internal appeals of Board employees). These rules also apply to actions brought by the General Counsel, except as otherwise provided in subpart G (concerning corrective action, disciplinary and stay proceedings). It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§ 28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the FEDERAL REGISTER. Notice of publication in the FEDERAL REGISTER must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

§ 28.17 Internal appeals of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel serves at the pleasure of the Chair. The General Counsel may not bring any complaint or charge concerning his or her own employment except to allege that he or she has been the victim of prohibited discrimination or a prohibited personnel practice as defined in 31 U.S.C. 732 (b)(2) or (f)(1).

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Special Counsel of the Merit Systems Protection Board (MSPB) (or the EEOC, as appropriate), that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the MSPB Special Counsel (or the EEOC) does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) In any event, whoever is so appointed shall possess all of the powers

and authority possessed by the General Counsel in employee appeal cases.

(c) The adjudication responsibilities and functions of the Board will be assumed by a person who is not a current or former employee of the Board or the GAO. The services of that person, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The person will be selected by an impartial body as described below.

(1) If agreed to by the MSPB (or the EEOC, as appropriate), that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If the MSPB (or the EEOC) does not agree to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee appeals cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board, in the same manner as if rendered by the Board under § 28.86(e). The procedure for judicial review of the decision shall be the same as that described in § 28.90.

(d) Any employee of the Board (other than the General Counsel) who believes that he or she is aggrieved by any personnel matter that is not reviewable by the Board under 31 U.S.C. 753(a) may file a grievance as follows:

(1) *Informal Step.* The employee must discuss the complained of incident with his or her supervisor as soon as possible after the complained of incident.

(2) *Step 1.* If the supervisor is unable to resolve the matter informally to the satisfaction of the employee, then the employee may file a formal grievance with the supervisor. The formal grievance must be filed by the employee with the supervisor within 20 days after the complained of incident. The supervisor must respond to the employee in writing within 10 days.

(3) *Step 2.* (i) If the employee is not satisfied with the supervisor's response, the employee has 10 days in which to appeal to the Chair. In this appeal, the employee must forward to the Chair the formal grievance, the su-

pervisor's response and a brief statement from the employee explaining why the supervisor's response is not satisfactory.

(ii) The Chair or another member designated by the Chair, shall meet with the employee and discuss the matter of concern within 10 days after service of the step 2 appeal. The Chair or designee shall issue a written resolution of the grievance.

(4) *Step 3.* Within 10 days after service of the Chair's resolution or within 60 days after initiating step 2, whichever occurs first, the employee may request that the full Board review the grievance. The decision of the full Board is the final decision in the matter.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36810, July 15, 1996]

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any person who has received a Right to Appeal Letter from the Office of General Counsel and who is claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a petition for review. A petition for review may also be filed by any person who has received a Right to Appeal Letter from the Office of General Counsel and who is alleging that the GAO or a labor organization engaged or is engaging in an unfair labor practice. A person whose employment was terminated as a result of a Reduction in Force may choose to file an appeal of that action directly with the Personnel Appeals Board, without first filing with the Board's Office of General Counsel.

(b) *When to file.* Petitions for review must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the Office of General Counsel. In the case of a person whose action involves a challenge to a separation based upon a Reduction in Force, and who chooses to bypass the Office of General Counsel of the Board, the appeal must be filed with the Clerk of the Board within 30 days after the effective date of the RIF action.